

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Centennial Communications Corp., Centennial)	
Communications Puerto Rico, Inc., All America)	
Cable & Radio, Inc.,)	
)	
Complainants,)	
)	
v.)	File No. EB-01-MD-021
)	
Tricom USA, Inc.,)	
)	
Defendant.)	

MEMORANDUM OPINION AND ORDER

Adopted: May 23, 2002

Released: May 31, 2002

By the Commission:

I. INTRODUCTION

1. In this Memorandum Opinion and Order, we dismiss a formal complaint that Centennial Communications Corporation (“Centennial”) and its affiliates Centennial Communications Puerto Rico, Inc. (“Centennial Puerto Rico”) and All America Cable & Radio, Inc. (“AACR”) filed against Tricom USA, Inc. (“Tricom USA”)¹ pursuant to section 208 of the Communications Act of 1934, as amended (“Act”).² The Complaint alleges, *inter alia*, that Tricom USA violated section 63.14(a) of the Commission’s rules³ and sections 201(b), 202(a), and 214 of the Act⁴ by accepting from its parent company in the Dominican Republic (Tricom S.A.) unfairly favorable rates, terms and conditions concerning interconnection and international call termination in the Dominican Republic. As explained in detail below, principles of international comity lead us to dismiss the Complaint, because the Dominican Republic’s telecommunications regulatory authority – Instituto Dominicano de las Telecomunicaciones (“INDOTEL”)⁵ – has either already addressed, or plans soon to address, all of the significant issues raised in this Complaint.

¹ Formal Complaint, File No. EB-01-MD-021 (filed Sept. 4, 2001) (“Complaint”).

² 47 U.S.C. § 208.

³ 47 U.S.C. § 63.14(a).

⁴ 47 U.S.C. §§ 201(b), 202(a), 214.

⁵ Joint Submission, File No. EB-01-MD-021 (filed Nov. 9, 2001) (“Joint Submission”) at 1, ¶ 8.

II. BACKGROUND

A. The Parties

2. Centennial is a telecommunications holding company incorporated in the United States.⁶ Centennial initiated this action on “behalf of itself and its affiliates.”⁷ Two of Centennial’s affiliates are AACR and Centennial Puerto Rico.⁸

3. AACR is a British Virgin Islands corporation that is licensed to provide a full range of telecommunications services within and from the Dominican Republic,⁹ including international telecommunications services from the Dominican Republic.¹⁰ AACR is a subsidiary of All America Cables & Radio, Inc., a Cayman Islands corporation, of which Centennial owns 70 percent.¹¹ Centennial Puerto Rico is a telecommunications company that is incorporated in the United States and headquartered in Puerto Rico.¹² It is a wholly-owned subsidiary of Centennial, through various intermediate subsidiaries.¹³

4. Tricom USA is a United States carrier that is licensed, pursuant to section 214 of the Act,¹⁴ to provide international telecommunications services from the United States to foreign countries.¹⁵ Tricom USA is not a licensed carrier in the Dominican Republic and does not install, maintain, or operate

⁶ Joint Submission at 1, ¶ 4; Supplement to Joint Submission, File No. EB-01-MD-021 (filed Jan. 11, 2002) (“Supp. Joint Submission”) at 9, ¶ 1.

⁷ Formal Complaint, File No. EB-01-MD-021 (filed Sept. 4, 2001) (“Complaint”) at 1, ¶ 1.

⁸ Complaint at 2-3, ¶ 4; Joint Submission at 1, ¶ 6; Supp. Joint Submission at 9, ¶ 5. Although the parties stipulate that AACR is one of the complainants in this case (Joint Submission at 1, ¶ 5; Supp. Joint Submission at 9, ¶ 2), they disagree as to whether Centennial Puerto Rico is a party. Supp. Joint Submission at 11-12, ¶ 1. Because we dismiss the Complaint, we need not resolve this issue.

⁹ Joint Submission at 1, ¶ 6-7; Supp. Joint Submission at 9, ¶ 2.

¹⁰ Joint Submission at 1-2, ¶ 9.

¹¹ Joint Submission at 1, ¶ 6.

¹² Supp. Joint Submission at 9, ¶ 5.

¹³ Supp. Joint Submission at 9, ¶ 5.

¹⁴ 47 U.S.C. § 214.

¹⁵ *Domtel Communications, Inc. Application for Authority to Provide Direct Service Between the United States and the Dominican Republic*, Memorandum Opinion, Order, Authorization and Certificate, 10 FCC Rcd 12159 (1995) (“*Section 214 Order*”), at ¶ 1. Tricom USA formerly operated as Domtel Communications, Inc. (“Domtel”). Joint Submission at 2, ¶ 11. As the successor to Domtel, Tricom USA is subject to all of the terms and conditions of the *Section 214 Order*. Joint Submission at 2, ¶ 11; Complaint at 3, ¶ 5; Defendant Tricom USA, Inc.’s Answer to the Complaint of Centennial Communications Corp., Centennial Communications Puerto Rico, Inc., and All America Cable & Radio, Inc., File No. EB-01-MD-021 (filed Oct. 13, 2001) (“Answer”) at 18, ¶ 5.

telecommunications infrastructure in that country.¹⁶ Tricom USA is a wholly-owned subsidiary of Tricom S.A., a telecommunications carrier in the Dominican Republic that is not a party to this action.¹⁷ Tricom S.A. provides a full array of telecommunications services within and from the Dominican Republic, pursuant to INDOTEL's authorization.¹⁸

B. This Proceeding

5. According to the Complaint, Tricom S.A. has supplied AACR with interconnection capacity in the Dominican Republic since 1995.¹⁹ AACR allegedly uses this interconnection capacity to carry calls to Tricom S.A. subscribers that originate with AACR's domestic wireless subscribers in the Dominican Republic, or that originate with callers in other countries, such as the United States.²⁰

6. The Complaint pleads that AACR and Tricom S.A. first entered into a letter agreement regarding interconnection in February 1995.²¹ The agreement allegedly provided that the parties would interconnect their networks solely for the purpose of terminating in-coming international traffic from AACR's facilities to Tricom S.A.'s local exchange network.²² In early 1998, AACR purportedly asked Tricom S.A. to provide additional circuits for AACR's growing domestic service, and proposed that the parties enter into a formal interconnection agreement that would address additional types of traffic not covered by the 1995 letter agreement.²³ According to the Complaint, Tricom S.A. refused both requests.²⁴ Although the parties exchanged correspondence regarding these issues between February 1999 and February 2000, the Complaint asserts that they failed to reach a resolution.²⁵

¹⁶ Supp. Joint Submission at 10, ¶ 11.

¹⁷ Joint Submission at 2, ¶¶ 13-15. The parties stipulate that the Commission lacks jurisdiction over Tricom S.A. Joint Submission at 1, ¶ 1.

¹⁸ Joint Submission at 2, ¶ 14. Neither Tricom S.A. nor AACR appears on the Commission's list of foreign carriers that do not qualify for the presumption that they lack market power. See 47 C.F.R. § 63.14 (note to paragraph (a)). This list, which is posted at <http://www.fcc.gov.ib>, identifies Compania Dominicana de Telefonos ("Codetel") as a carrier in the Dominican Republic that does not qualify for the presumption, but contains no reference to Tricom S.A. or AACR.

¹⁹ Complaint at 12, ¶ 22. In describing the events giving rise to this action, the Complaint frequently refers to Centennial and its affiliates collectively as "Centennial" and to Tricom S.A. simply as "Tricom." See, e.g., Complaint at 12-16, ¶¶ 23-34; at 20, ¶ 43. These references are misleading. Our review of the record establishes that the operative events took place in the Dominican Republic and involved AACR and Tricom S.A. Accordingly, in summarizing the Complaint's allegations, we distinguish between Centennial and AACR and between Tricom USA and Tricom S. A., even though the Complaint often does not.

²⁰ Complaint, Exhibit A (Declaration of Jose A. Rizek ("Rizek Decl.)) at 2-3, ¶¶ 7-8.

²¹ Complaint at 12, ¶ 22.

²² Complaint at 12, ¶¶ 22, 23.

²³ Complaint at 12, ¶ 23.

²⁴ Complaint at 12, ¶ 23.

²⁵ Complaint, Exhibit A (Rizek Decl.) at 7, ¶¶ 14-15.

7. In March 2000, Tricom S.A. allegedly presented AACR with a draft interconnection agreement addressing the termination of all types of traffic.²⁶ The Complaint avers that AACR refused to sign the proposed agreement on the ground that it allegedly contained a discriminatory volume discount provision under which AACR was required to have 75,000 lines in service before it could obtain the most favorable pricing on certain calls.²⁷

8. According to the complaint, in October 2000, Tricom S.A. provisioned additional circuits for interconnection to AACR; however, this capacity still was inadequate to meet AACR's needs.²⁸ In December 2000, AACR allegedly paid Tricom S.A. for four additional T-1 lines, but Tricom S.A. refused to activate the lines until AACR signed Tricom S.A.'s draft interconnection agreement.²⁹ AACR purportedly rejected Tricom S.A.'s proposed interconnection agreement, and in March 2001, AACR sent Tricom S.A. its own draft agreement.³⁰ The Complaint asserts that AACR's draft agreement contained pricing terms that differed substantially from those proposed by Tricom S.A. Specifically, AACR's draft agreement allegedly set forth a rate of 1.1 cents per minute for local termination of international calls to Tricom S.A. customers, known as the "international access charge,"³¹ while Tricom S.A.'s proposed agreement specified an international access charge of 4.2 cents.³²

9. By May 2001, Tricom S.A. and AACR purportedly had failed to reach an interconnection agreement, and Tricom S.A. still had not activated the T-1 lines that AACR purchased in December 2000.³³ The Complaint avers that, on May 2, 2001, AACR filed a petition with INDOTEL asking INDOTEL to intervene in AACR's interconnection dispute with Tricom S.A.³⁴

10. The Complaint advances two principal contentions. First, the Complaint alleges that Tricom S.A. has delayed providing interconnection capacity to AACR, a competitor in the Dominican Republic, and that Tricom S.A. does not impose similar capacity constraints on its affiliate, Tricom USA.³⁵ The Complaint avers that Tricom S.A.'s failure to provide adequate interconnection capacity to AACR impeded the complainants' ability to complete both domestic and international calls to Tricom

²⁶ Complaint at 13-14, ¶ 27; Exhibit A (Rizek Decl.) at 7, ¶ 18.

²⁷ Complaint at 13-14, ¶ 27; Exhibit A (Rizek Decl.) at 7, ¶¶ 18-19.

²⁸ Complaint at 12-13, ¶ 24; Exhibit A (Rizek Decl.) at 6-7, ¶¶ 17-18.

²⁹ Complaint at 13, ¶ 25.

³⁰ Complaint at 14, ¶ 28; Exhibit A (Rizek Decl.) at 8-9, ¶ 22.

³¹ Complaint at 14, ¶ 29; Exhibit A (Rizek Decl.) at 4, ¶ 9; at 8-9, ¶ 22. The charges referenced here, and throughout this opinion and order, are in U.S. dollar equivalents.

³² Complaint at 14, ¶ 30.

³³ Complaint at 15, ¶ 31; Exhibit A (Rizek Decl.) at 10, ¶¶ 25-26.

³⁴ Complaint at 15, ¶ 31; Exhibit A (Rizek Decl.) at 10, ¶ 25. Accordingly, the INDOTEL proceeding, which is discussed in detail below, was pending at the time Complainants commenced the instant action on September 4, 2001.

³⁵ Complaint at 7-8, ¶¶ 14-15; at 23-24, ¶¶ 49-50.

S.A. subscribers in the Dominican Republic.³⁶ Second, the Complaint argues that Tricom S.A.’s practice of charging 4.2 cents to terminate international calls – allegedly well above the cost of that service – amounts to preferential treatment of Tricom USA.³⁷ Even if Tricom S.A. charges Tricom USA the same rate of 4.2 cents that it charges AACR for terminating international calls, the Complaint maintains that the charge does not represent a true cost to Tricom USA, because Tricom USA, in effect, pays itself when it remits payment to its parent.³⁸ The Complaint contends that because Tricom USA has been free of the capacity constraints and excessive international call termination costs that Tricom S.A. has imposed on AACR, Tricom USA unlawfully has accepted preferential treatment from a foreign carrier in violation of 47 C.F.R. § 63.14(a) and the *Section 214 Order*,³⁹ and has engaged in unreasonable and discriminatory practices in violation of 47 U.S.C. §§ 201(b) and 202(a).⁴⁰

C. The Proceeding Before INDOTEL

1. INDOTEL’s Authority

11. Under the Dominican Republic’s telecommunications statute, INDOTEL has “national jurisdiction” over the regulation and control of telecommunications.⁴¹ The statute charges INDOTEL with guaranteeing “the existence of an effective, fair and supportable competition in the provision of the public telecommunication services.”⁴² INDOTEL has authority, *inter alia*, to issue regulations,⁴³ to “[p]revent or correct anticompetitive or discriminatory practices . . . ,”⁴⁴ and to “[s]ettle . . . disputes that

³⁶ Complaint at 16-18, ¶¶ 35-39.

³⁷ Complaint at 8, ¶ 15; at 24-25, ¶ 52; Centennial Communications Corp.’s Reply to Affirmative Defenses, File No. EB-01-MD-021 (filed Oct. 23, 2001) (“Reply”) at 15-17. According to the Complaint, the 1.1 cent charge is the rate that all carriers in the Dominican Republic charge for local termination of *domestic* traffic. Complaint at 14, ¶ 29; Exhibit A (Rizek Decl.) at 8-9, ¶ 22; at 15, ¶ 39. The Complaint maintains that because local termination of international traffic uses the same resources and involves the same costs as local termination of domestic traffic, Tricom S.A.’s 4.2 cent international access charge is excessive. Complaint at 14, ¶ 29.

³⁸ Complaint at 8, ¶ 15; at 24-25, ¶ 52; Exhibit A (Rizek Decl.) at 16, ¶ 42; Reply at 15-17. The Complaint concedes that complainants do not know what Tricom S.A. charges Tricom USA for local termination of international calls. Complaint, Exhibit B (Declaration of Lee L. Selwyn) at 23, ¶ 27.

³⁹ Complaint at 7-9, ¶¶ 14-16; at 22-31, ¶¶ 48-67.

⁴⁰ Complaint at 32, ¶ 69.

⁴¹ Tricom USA, Inc.’s Brief in Response to the Federal Communications Commission’s November 5, 2001 Letter Ruling, File No. EB-01-MD-021 (filed Nov. 28, 2001) (“Tricom Opening Brief”), Exhibit 3 (English Translation of Article 76.2 of the Dominican Republic General Telecommunications Law 153-98 (“DR Law 153”)). The parties have stipulated to the accuracy of this translation. Supp. Joint Submission at 4. All citations to DR Law 153 in this order are to the English translation.

⁴² Tricom Opening Brief, Exhibit 3 (DR Law 153), Article 77(b).

⁴³ See, e.g., Tricom Opening Brief, Exhibit 3 (DR Law 153), Articles 77 (c), 78(a), 78(o).

⁴⁴ Tricom Opening Brief, Exhibit 3 (DR Law 153), Article 78(d).

may originate among providers”⁴⁵ Such disputes may include disagreements about the terms of interconnection.⁴⁶ Although the statute states that “[i]nterconnection agreements are to be freely negotiated by the parties,” it provides that, in the case of disagreement, INDOTEL may intervene, at the request of the parties or on the government’s initiative, to establish the conditions of interconnection.⁴⁷

2. AACR’s Petition

12. The petition that AACR filed with INDOTEL, like the Complaint before this Commission, charged that Tricom S.A. had engaged in anticompetitive behavior by denying AACR additional capacity to interconnect the two companies’ networks in the Dominican Republic. The petition described in detail AACR’s alleged unsuccessful efforts to obtain interconnection capacity from Tricom S.A. and to agree upon the terms of an interconnection agreement.⁴⁸ The petition accused Tricom S.A. of delaying the completion of a formal interconnection agreement with AACR in order to avoid providing AACR with capacity that it could use to compete with Tricom S.A.⁴⁹ According to the petition, Tricom’s failure to provide additional interconnection capacity had adversely affected AACR’s ability to terminate calls.⁵⁰

13. The petition also complained that the rate of 4.2 cents per minute that Tricom S.A. and other Dominican local operators charge for local termination of international calls was well above the rate they charge for local termination of domestic calls.⁵¹ The petition argued that this price differential was the result of an anticompetitive effort by Tricom S.A. and other companies that control local termination of calls to “caus[e] the international business to operate with a minimum of profitability.”⁵² The petition also challenged as discriminatory Tricom S.A.’s requirement that AACR meet a threshold of 75,000 lines

⁴⁵ Tricom Opening Brief, Exhibit 3 (DR Law 153), Article 78(g).

⁴⁶ Tricom Opening Brief, Exhibit 3 (DR Law 153), Article 56.

⁴⁷ Tricom Opening Brief, Exhibit 3 (DR Law 153), Article 56.

⁴⁸ Answer, Exhibit 7 (INDOTEL Petition) at 3-7, §§ 1.8-1.19.

⁴⁹ Answer, Exhibit 7 (INDOTEL Petition) at 3-4, § 1.9 (alleging that Tricom S.A. had shown a “lack of interest in formalizing . . . [an interconnection] [a]greement” because such an agreement involved “increasing the market competition capacity of [AACR]”). See Answer, Exhibit 7 (INDOTEL Petition) at 4, § 1.11 (alleging that Tricom S.A. had “refus[ed] to expand the traffic originating and terminating capacity between both networks, which prevented [AACR] from fulfilling its international correspondent undertakings, and offering its services to customers owning a TRICOM line”).

⁵⁰ Answer, Exhibit 7 (INDOTEL Petition) at 7, § 1.19 (“calls originating in our network and intended for TRICOM were being blocked by limitations on the capacity attributable solely to TRICOM”). See Answer, Exhibit 7 (INDOTEL Petition) at 8, § 2.1 (AACR was forced to “request from international companies with whom [it] hold[s] correspondent relations to abstain from sending [AACR] calls intended for TRICOM network [sic], due to the inability to complete them . . .”).

⁵¹ Answer, Exhibit 7 (INDOTEL Petition) at 18, § 2.3; Supp. Joint Submission at 2, ¶ 7 (stipulating that .68 centavos Dominicanos is equal to 4.2 cents in U.S. currency). See Supp. Joint Submission at 6, ¶ 9.

⁵² Answer, Exhibit 7 (INDOTEL Petition) at 18, § 2.3.

in service in order to obtain the most favorable pricing terms on certain calls.⁵³ The petition acknowledged that the terms that Tricom S.A. sought to include in the parties' interconnection agreement were "standard" terms for such agreements in the Dominican Republic, but argued that the standard terms were inappropriate for modern telecommunications systems.⁵⁴

14. In the petition's request for relief, AACR asked INDOTEL, *inter alia*, to issue an order setting the interconnection terms and conditions that would govern the AACR-Tricom S.A. relationship,⁵⁵ to declare that Tricom S.A. had violated DR Law 153 and damaged AACR by delaying execution of an interconnection agreement;⁵⁶ to order Tricom S.A. to activate immediately the T-1 lines that AACR purchased in December 2000;⁵⁷ and to impose monetary sanctions on Tricom S.A.⁵⁸

3. INDOTEL's Rulings

15. On June 11, 2001, INDOTEL ordered Tricom S.A. to activate the four T-1 lines that AACR purchased in December 2000.⁵⁹ Tricom S.A. complied with that order.⁶⁰ INDOTEL also ordered the parties to appear for a hearing on the terms of the AACR-Tricom S.A. interconnection agreement.⁶¹ AACR and Tricom S.A. submitted further briefs, and INDOTEL held a hearing on June 25, 2001, during which each side was permitted to present oral argument concerning the terms of their interconnection agreement.⁶²

16. On August 21, 2001, INDOTEL ruled on the AACR-Tricom S.A. dispute.⁶³ INDOTEL

⁵³ Answer, Exhibit 7 (INDOTEL Petition) at 16-17, § 2.2; *See* Supp. Joint Submission at 6, ¶ 9.

⁵⁴ Supp. Joint Submission at 5, ¶ 4.

⁵⁵ Answer, Exhibit 7 (INDOTEL Petition) at 26.

⁵⁶ Answer, Exhibit 7 (INDOTEL Petition) at 26.

⁵⁷ Answer, Exhibit 7 (INDOTEL Petition) at 26. *See id.* at 8, § 2.1.

⁵⁸ Answer, Exhibit 7 (INDOTEL Petition) at 26.

⁵⁹ Supp. Joint Submission at 6, ¶ 6; Complaint, Exhibit 20 (INDOTEL Resolution No. 043-01 ("Resolution No. 043-01")) at 1. The parties have stipulated to the accuracy of an English translation of Complaint Exhibit 20, which was attached to the Letter from Karlyn D. Stanley, counsel for complainants, to Judith O'Neill, counsel for defendant, File No. EB-01-MD-021 (filed Sept. 18, 2001); Supp. Joint Submission at 4, § III. All citations to Resolution No. 043-01 in this Order are to the English translation.

⁶⁰ Supp. Joint Submission at 6, ¶ 6.

⁶¹ Supp. Joint Submission at 6, ¶ 7.

⁶² Supp. Joint Submission at 6, ¶¶ 7-8.

⁶³ Complaint, Exhibit 24 (INDOTEL Resolution No. 053-01 ("Resolution No. 053-01")); Supp. Joint Submission at 6, ¶ 9. The parties have stipulated to the accuracy of an English translation of Exhibit 24, which was attached to the Letter from Christopher W. Savage, counsel for complainants, to Lisa Saks, Market Disputes Resolution Division, Enforcement Bureau, File No. EB-01-MD-021 (dated Feb. 26, 2002); Supp. Joint Submission at 4, § III. All citations to Resolution No. 053-01 in this Order are to the English translation.

concluded, *inter alia*, that it could not find, as AACR urged, that Tricom S.A. delayed the execution of an interconnection agreement between the parties, observing instead that the “contract has not been signed because of the disagreement promoted by both parties”⁶⁴ INDOTEL further ruled that the interconnection terms that AACR claimed were discriminatory, specifically the 75,000 line threshold and 4.2 cent access charge for termination of international calls, were standard interconnection terms in the Dominican Republic.⁶⁵ INDOTEL found that because the interconnection terms that AACR proposed were different from the standard terms, adopting AACR’s terms would “introduce distortion in the market,”⁶⁶ and INDOTEL ordered AACR and Tricom S.A. to sign an interconnection agreement that does not “introduce provisions that are discriminatory”⁶⁷ Finally, INDOTEL stated its intention subsequently to assess the interconnection terms that AACR had proposed within the framework of new interconnection regulations and rate regulations that would apply to all carriers.⁶⁸

17. AACR filed a petition with INDOTEL seeking reconsideration of Resolution 053-01 and requesting that INDOTEL set the terms of the interconnection agreement between AACR and Tricom S.A.⁶⁹ On September 13, 2001, INDOTEL issued a decision affirming its earlier ruling.⁷⁰ INDOTEL again rejected AACR’s claim that Tricom S.A. improperly had denied AACR access to its network:

[T]he difference existing between AACR and Tricom [S.A.] . . . has not resulted from the refusal by Tricom [S.A.] to allow AACR access to its networks via the corresponding interconnection contract; but rather the same has been the consequence of the iron will of each of the parties to sign the indicated contract within the terms and conditions proposed by each of them.⁷¹

18. As for the terms of interconnection, INDOTEL ruled that the “access charges included by the parties in their interconnection contract must be the same established in the market.”⁷² INDOTEL reiterated its concern that adopting AACR’s proposed interconnection terms could cause “distortions in the Dominican telecommunications market” that may be “at variance with the Principle of Non-

⁶⁴ Complaint, Exhibit 24 (Resolution No. 053-01) at 27.

⁶⁵ Supp. Joint Submission at 6, ¶ 9. See Complaint, Exhibit 24 (Resolution No. 053-01) at 24-26.

⁶⁶ Complaint, Exhibit 24 (Resolution No. 053-01) at 25.

⁶⁷ Complaint, Exhibit 24 (Resolution No. 053-01) at 35; Supp. Joint Submission at 6, ¶ 9.

⁶⁸ Complaint, Exhibit 24 (Resolution No. 053-01) at 29; see *id.* at 26, 32-33, 37.

⁶⁹ Supp. Joint Submission at 6, ¶ 10. Shortly after filing the petition for reconsideration, complainants filed the instant Complaint on September 4, 2001.

⁷⁰ Supp. Joint Submission at 6-7, ¶ 11. Answer, Exhibit 1 (INDOTEL Resolution No. 056-01 (“Resolution No. 056-01”)). Exhibit 1 to the Answer is an English translation of Resolution No. 056-01, and the parties have stipulated to the accuracy of the translation. Supp. Joint Submission at 4, § III. All citations to Resolution No. 056-01 in this Order are to the English translation.

⁷¹ Answer, Exhibit 1 (Resolution No. 056-01) at 16.

⁷² Answer, Exhibit 1 (Resolution No. 056-01) at 22.

Discrimination” established in Dominican law.⁷³ INDOTEL also underscored its intent, in response to the issues AACR had raised, to initiate a regulatory process aimed at revising existing regulations dealing with rates and costs of services.⁷⁴ In addition, INDOTEL ordered AACR and Tricom S.A. to enter into an interconnection agreement by no later than September 21, 2001 that included terms that Tricom S.A. previously had proposed.⁷⁵ Neither party appealed this decision to a Dominican Court, and it now is final.⁷⁶

19. On September 21, 2001, Tricom S.A. signed and delivered to AACR an interconnection agreement containing the terms that INDOTEL had mandated.⁷⁷ AACR did not sign the proffered agreement, but instead attempted, unsuccessfully, to negotiate alternative terms with Tricom S.A.⁷⁸ On November 9, 2001, INDOTEL issued a resolution stating that AACR would be subject to monetary sanctions under DR Law 153 if AACR refused to sign the interconnection agreement.⁷⁹ Ten days later, AACR signed the interconnection agreement “under protest.”⁸⁰ The parties stipulate that, since executing the interconnection agreement, they have cooperated with each other regarding provisioning of T-1 lines, and that neither party accuses the other of failing to cooperate in either payment for or installation of T-1 lines.⁸¹

III. DISCUSSION

A. The Doctrine of Comity Permits a Tribunal, in Its Discretion, to Decline Jurisdiction Over a Matter that Is Properly Adjudicated in a Foreign Tribunal.

20. The doctrine of international comity permits a tribunal to decline to exercise jurisdiction in a case properly adjudicated in a foreign tribunal.⁸² Comity reflects the broad concept of respect among

⁷³ Answer, Exhibit 1 (Resolution No. 056-01) at 11.

⁷⁴ Answer, Exhibit 1 (Resolution No. 056-01) at 15. INDOTEL explained that interconnection costs would remain at the market level until such regulatory revisions occurred. *Id.*

⁷⁵ Supp. Joint Submission at 6-7, ¶ 11.

⁷⁶ Supp. Joint Submission at 8, ¶ 25.

⁷⁷ Supp. Joint Submission at 7, ¶ 12.

⁷⁸ Supp. Joint Submission at 7, ¶ 13.

⁷⁹ Supp. Joint Submission at 7, ¶ 14; Tricom Opening Brief, Exhibit 5 (INDOTEL Resolution No. 070-01 (“Resolution No. 070-01”)) at 13. Exhibit 5 to Tricom’s Opening Brief is an English translation of Resolution No. 070-01, and the parties have stipulated to the accuracy of the translation. Supp. Joint Submission at 4, § III. All citations to Resolution No. 070-01 in this Order are to the English translation.

⁸⁰ Supp. Joint Submission at 7, ¶¶ 15-16.

⁸¹ Supp. Joint Submission at 9, ¶¶ 6, 27.

⁸² See, e.g., *Bigio v. The Coca Cola Co.*, 239 F.3d 440, 454 (2d Cir. 2001) (remanding a dispute against a United States defendant over government confiscation of property in Egypt to district court for a determination of whether to dismiss on comity grounds.); *In re Maxwell Communication Corp.*, 93 F.3d 1036, 1047 (2d Cir.1996) (affirming dismissal of complaint by debtor in deference to English bankruptcy proceedings).

nations.⁸³ It embodies “the recognition which one nation allows within its territory to the legislative, executive, or judicial acts of another nation, having due regard both to international duty and convenience, and to the rights of its own citizens, or of other persons who are under the protection of its laws.”⁸⁴ As the Commission has noted, such recognition is entirely discretionary by individual nations.⁸⁵ Tribunals in the United States have invoked comity principles in deciding (i) whether to decline to adjudicate matters based on the pendency or availability of litigation in a foreign forum;⁸⁶ (ii) whether to enforce foreign judgments;⁸⁷ and (iii) whether to accept the judgments of foreign tribunals on a cause of action or a particular issue.⁸⁸ In general, United States tribunals have deferred to the proceedings and judgments of foreign tribunals where the foreign forum afforded the litigants an opportunity for a full and fair adjudication, and there is no evidence of partiality, prejudice, or other special circumstances demonstrating that comity should not apply.⁸⁹

B. We Apply the Doctrine of Comity and Decline to Exercise Jurisdiction over

⁸³ *Enforcement of Other Nations’ Prohibitions Against the Uncompleted Call Signaling Configuration of International Call-Back Service*, FCC 02-28, Notice of Proposed Rulemaking, 2002 WL 226650 (rel. Feb. 13, 2002) (“*Call-Back NPRM*”) at 2, ¶ 4. See *Hilton v. Guyot*, 159 U.S. 113, 163-64 (1895).

⁸⁴ *Hilton v. Guyot*, 159 U.S. at 164; Restatement (Third) of the Foreign Relations Law of the United States, § 101, comment e (1986).

⁸⁵ *Call-Back NPRM*, 2002 WL 22650 at 2, ¶ 4.

⁸⁶ *Diorinou v. Mezitis*, 237 F.3d 133, 138-39 (2d Cir. 2001). See e.g., *Finanz AG Zurich v. Banco Economico S.A.*, 192 F.3d 240, 246-50 (2d Cir.1999) (affirming dismissal of creditor’s suit against debtor on comity grounds in deference to a pending liquidation proceeding against the debtor in Brazil); *Allstate Life Ins. Co. v. Linter Group Ltd.*, 994 F.2d 996, 998-1002 (2d Cir. 1993), *cert. denied*, 510 U.S. 945 (1993) (affirming dismissal of securities action on grounds of comity and forum non-conveniens in recognition of pending liquidation proceedings in Australia).

⁸⁷ *Diorinou v. Mezitis*, 237 F.3d at 139. See, e.g., *Victrix Steamship Co. v. Salen Dry Cargo A.B.*, 825 F.2d 709 (2d Cir.1987) (affirming decision not to enforce a British judgment against a bankrupt debtor in deference to pending bankruptcy proceedings in Sweden).

⁸⁸ *Diorinou v. Mezitis*, 237 F.3d at 139-40. See, e.g., *id.* at 142-46 (deferring to Greek court’s custody determination on comity grounds); *Alfadda v. Fenn*, 966 F. Supp. 1317, 1326 (S.D.N.Y. 1997), *aff’d on other grounds*, 159 F.3d 41(2d Cir. 1998) (recognizing French judgment, as a matter of comity, and holding that judgment had preclusive effect as to certain claims).

⁸⁹ *Hilton v. Guyot*, 159 U.S. at 202-03 (“where there has been opportunity for a full and fair trial abroad before a court of competent jurisdiction, conducting the trial upon regular proceedings, . . . under a system of jurisprudence likely to secure an impartial administration of justice . . . and there is nothing to show either prejudice in the court, or in the system of laws under which it was sitting, or fraud in procuring the judgment, or any other special reason why the comity of this nation should not allow [the judgment] full effect, the merits of the case should not . . . be tried afresh”); *Diorinou v. Mezitis*, 237 F.3d at 142-43 (observing that “American courts will normally accord considerable deference to foreign adjudications as a matter of comity” and that applying the doctrine of comity “often entails consideration of the fairness of a foreign adjudicating system”) (citations omitted); *Finanz AG Zurich v. Banco Economico S.A.*, 192 F.3d at 246 (“United States courts ordinarily refuse to review acts of foreign governments and defer to proceedings taking place in foreign countries . . . so long as ‘the foreign court had proper jurisdiction and enforcement does not prejudice the rights of United States citizens or violate domestic public policy.’”) (citations omitted).

the Complaint.

21. A number of important considerations support a decision to apply the doctrine of international comity and dismiss this case. First, the actions at issue here – Tricom S.A.’s alleged delay in providing interconnection capacity to AACR in the Dominican Republic, and Tricom S.A.’s allegedly excessive fee for local termination of international calls – were the subject of the proceeding before INDOTEL. INDOTEL rejected AACR’s claim that Tricom S.A. denied AACR interconnection, instead concluding that the parties’ interconnection dispute resulted from each side’s insistence on the interconnection terms it had proposed.⁹⁰ INDOTEL further found that adopting the non-standard pricing terms proposed by AACR for the Tricom S.A.-AACR relationship, while leaving the standard terms in place for other Dominican carriers, would cause distortions in the Dominican telecommunications market and would conflict with the non-discrimination provisions of the Dominican telecommunications law.⁹¹ INDOTEL thus declined to adopt AACR’s proposed non-standard pricing terms when it set the terms of the Tricom S.A.-AACR interconnection agreement. In short, the facts and issues that INDOTEL addressed are the same ones that this Commission would have to consider in deciding the instant Complaint.

22. Second, both parties apparently regard INDOTEL as an appropriate forum to address AACR’s complaints about Tricom S.A.’s alleged anticompetitive conduct. AACR asked INDOTEL to intervene in its dispute with Tricom S.A.,⁹² and Tricom USA consistently has argued that INDOTEL is the proper forum to decide AACR’s claims.⁹³

23. Third, there is no allegation that the proceedings before INDOTEL in any way were conducted unfairly or in a prejudicial manner. Indeed, Centennial never disputed Tricom’s contention that AACR had a full and fair opportunity to litigate its claims before INDOTEL.⁹⁴ INDOTEL rendered its final decision in this matter after receiving pleadings and briefs from both sides, holding an oral hearing, and reviewing AACR’s motion for reconsideration of INDOTEL’s initial decision.⁹⁵ AACR was also accorded the right to appeal INDOTEL’s decision to a Dominican court, although AACR chose not to exercise that right.⁹⁶ AACR appears simply to be unhappy about the result INDOTEL reached.

24. Fourth, the relevant dealings between AACR and Tricom S.A. all took place in the Dominican Republic, the witnesses with knowledge of these facts are located in the Dominican Republic, and the relevant documents, all of which are written in Spanish, also are located there. Consequently,

⁹⁰ See Answer, Exhibit 1 (Resolution No. 056-01) at 16.

⁹¹ Complaint, Exhibit 24 (Resolution No. 053-01) at 24-26; Answer, Exhibit 1 (Resolution No. 056-01) at 11.

⁹² Answer, Exhibit 7 (INDOTEL Petition); Supp. Joint Submission at 5, ¶¶ 3, 4.

⁹³ Tricom Opening Brief 12; Answer at 57, 61, 64.

⁹⁴ See Tricom Opening Brief at 4-5, 12-13, 24-25; Centennial Communications Corp.’s Supplemental Reply Brief, File No. EB-01-MD-021 (filed Dec. 19, 2001) at 7-8, 10-14.

⁹⁵ See Supp. Joint Submission at 6, ¶¶ 7-11.

⁹⁶ See Supp. Joint Submission at 8, ¶ 25.

from the standpoint of administrative convenience, INDOTEL is better-equipped to handle this dispute.

25. Finally, INDOTEL's announced intention to address AACR's challenge to the 4.2 cent price that Tricom S.A. (and other Dominican carriers) charges for local termination of international calls in an upcoming regulatory proceeding, rather than in the context of AACR's individual dispute with Tricom S.A., also weighs against an exercise of jurisdiction here. INDOTEL chose this regulatory approach based on its concern that any change in call termination rates ought to apply to all carriers in the Dominican market, so as to avoid potential price discrimination and market distortions. We believe that INDOTEL's desire to avoid a piecemeal approach to these rate issues is entitled to deference. Accordingly, while we cannot predict the results of INDOTEL's upcoming regulatory proceedings – and thus express no view on any actions INDOTEL may take – we believe that considerations of international comity counsel in favor of our declining to address the merits of AACR's position on international call termination rates while INDOTEL is in the process of reviewing these very same issues in the context of a broader regulatory proceeding.

26. For the reasons stated above, even though the findings and conclusions of INDOTEL may be different than those we might have reached, we conclude that the Complaint filed in this matter should be dismissed on grounds of international comity.⁹⁷ INDOTEL has either already addressed, or plans soon to address, all of the significant issues raised in this Complaint. Thus, we should not allow complainants to relitigate those issues here.

IV. ORDERING CLAUSES

27. ACCORDINGLY, IT IS ORDERED, pursuant to sections 1, 4(i), 4(j), 201(b), 202(a), and 214 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 154(j), 201(b), 202(a), and 214, and section 63.14(a) of the Commission's rules, 47 C.F.R. § 63.14(a), that the Complaint filed by Centennial Communications Corp. and its affiliates against Tricom USA, Inc. IS DISMISSED WITH PREJUDICE, and this proceeding is TERMINATED.

28. IT IS FURTHER ORDERED that Complainants' Motion to Strike and for Summary Judgment, filed on October 26, 2001, is denied as moot.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

⁹⁷ Complainants filed a Motion to Strike and for Summary Judgment that sought to strike portions of the Answer based on Tricom USA's asserted lack of candor in denying knowledge of certain facts alleged in the Complaint, and argued that striking that material would entitle complainants to summary judgment. Centennial's Motion to Strike and for Summary Judgment, File No. EB-01-MD-021 (filed Oct. 26, 2001). We deny this motion as moot, because our decision to dismiss this case on grounds of international comity does not depend in any way upon the portions of the Answer that are the subject of the motion.